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Attorneys for Plaintiff
RES-CARE, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RES-CARE, INC.,

Plaintiff,

v.

ROTO-ROOTER SERVICES
COMPANY, ROTO-ROOTER
CORPORATION, BRADFORD-WHITE
CORPORATION, LEONARD VALVE
COMPANY, and DOES 1 through 20,
inclusive,

Defendants.

No. C-09-03856 EDL

**UPDATED JOINT FRCP RULE 26(f)
STATEMENT**

Date: March 23, 2010
Time: 10:00 a.m.
Place: Courtroom E, 15th Floor
Judge: Honorable Elizabeth D. Laporte

Complaint Filed: August 21, 2009

Pursuant to FRCP 26(f), Civil L.R. 16-9(a), and this Court's Standing Order, the parties to the above-entitled action certify that they met and conferred prior to the second Case Management Conference scheduled for March 23, 2010 in this case and submit this Updated Joint FRCP 26 (f) Statement.

1. Jurisdiction and Service:

Plaintiff: Plaintiff Res-Care, Inc. ("Res-Care") initiated this case in this Court on August 21, 2009. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The action is brought under 29 U.S.C. §§ 1104 and 1132. Plaintiff also seeks declaratory and injunctive relief pursuant to 28 U.S.C. § 2201. Plaintiff is

1 represented by Hanson Bridgett LLP.

2 **Defendants:** Ken Simoncini, Simoncini & Associates, attorneys for Roto-
3 Rooter Services Company and Roto-Rooter Corporation; William Cremer and Thomas
4 Pender, Cremer, Spina, Shaughnessy, Jansen & Siegert LLC, attorneys for Leonard
5 Valve Company; and Joseph C. Wright, Cannata, Ching & O'Toole LLP, attorneys for
6 Bradford White Corporation.

7 **2. Facts:**

8 In this action, Res-Care seeks indemnification and contribution from
9 Defendants based on their proportionate share of liability for claims for which Res-Care
10 settled and paid damages for in the matter of *Conservatorship of the Person and Estate*
11 *of Theresa Rodriguez v. Res-Care, Inc., et al.*, San Mateo Superior Court Case No.
12 114740 (the "Underlying Action"). Res-Care was sued in the Underlying Action for
13 damages sustained by a former resident of a RES-CARE facility, Theresa Rodriguez, a
14 developmentally disabled adult, who suffered serious burn injuries as the result of a
15 scalding incident while being showered. To avoid the cost and risk of further litigation,
16 Res-Care agreed to a monetary settlement of the Underlying Action and, pursuant to a
17 settlement agreement negotiated among Res-Care, RCCA Services and Ms. Rodriguez
18 (the "Rodriguez Settlement"), Res-Care paid the settlement amount of 8.5 million dollars
19 to the conservator of Ms. Rodriguez on August 26, 2008, in exchange for her release of
20 all claims against Res-Care and RCCA Services. Res-Care contends that Ms.
21 Rodriguez' injuries were caused in whole or substantial part by a malfunction in the
22 water heating system at the McGarvey Home. That water heating system is comprised
23 of a water heater and mixing valve. The water heater was designed, manufactured and
24 distributed by Defendant Bradford White. The mixing valve was designed, manufactured
25 and distributed by Defendant Leonard Valve. Defendant Roto-Rooter sold, installed and
26 serviced the Bradford White water heater just days prior to and after the scalding
27 incident.

28 ///

1 **3. Legal Issues:**

2 Without limitation and without waiver of any parties' rights, remedies, or
3 positions, the parties have identified the following legal issues:

4 (a) Whether Defendants had a duty to properly design, manufacture,
5 sell, install, analyze, inspect, repair, equip and/or supply adequate warnings regarding
6 the Water Heater System.

7 (b) Whether Defendants negligently and carelessly designed,
8 manufactured, sold, installed, analyzed, inspected, repaired, equipped and/or supplied
9 with inadequate warnings the Water Heater and Mixing Valve.

10 (c) Whether Defendants knew, or in the exercise of reasonable care
11 should have known, that the Water Heater and Mixing Valve were defective and
12 dangerous products, unsafe for the purpose and use for which each was intended, and
13 likely to cause injury to persons.

14 (d) Whether the acts and omissions of Defendants' were the cause-in-
15 fact and proximate cause of Ms. Rodriguez' injuries and/or shared in the liability for the
16 harm she suffered.

17 (e) Whether Defendants are jointly and severally liable for the injuries,
18 and damages that Ms. Rodriguez suffered.

19 (f) Whether Res-Care is entitled to indemnity and/or contribution from
20 Defendants toward the amounts it was required to pay to resolve the Underlying Action,
21 based on principles of comparative equitable indemnity and comparative fault

22 (g) Whether the acts and/or omissions of RCCA Services and/or Res-
23 Care of California, its' agents or employees, constituted a supervening, intervening
24 cause of Ms. Rodriguez' injuries.

25 (h) Whether the acts and/or omissions of Res-Care, its' agents or
26 employees, was the cause in fact and proximate cause of Ms. Rodriguez' injuries.

27 (i) Whether Res-Care's settlement with plaintiff in the underlying action
28 was reasonable and not voluntary.

(j) Whether the Defendants herein are jointly and severally liable with Res-Care for the injuries and damages to Ms. Rodriguez.

(k) Whether Res-Care violated the California Elder Abuse Act.

(l) Whether Res-Care is entitled to contribution or indemnity for acts that may violate the California Elder Abuse Act.

4. Motions:

Plaintiff's Position: Plaintiff anticipates filing a motion to compel Roto Rooter and Leonard Valve to participate in good faith in a settlement conference and for monetary sanctions in the near future.

Defendants' Position: Roto Rooter anticipates filing a FRCP Rule 12(b)(6) motion and/or a FRCP Rule 56 motion for summary judgment.

Leonard Valve anticipates filing a FRCP Rule 12(b)(6) motion and/or FRCP Rule 56 motion for summary judgment.

Bradford White anticipates filing a FRCP Rule 12(b)(6) motion and/or FRCP Rule 56 motion for summary judgment.

5. Amendment of Pleadings:

None are anticipated at this time.

6. Evidence Preservation:

The parties have met and conferred and confirmed the preservation of all electronic and other evidence.

7. Disclosures:

The parties have completed the exchange of all Initial Disclosures.

8. Discovery:

Substantial discovery was conducted in the Underlying Action. This time includes time spent propounding and responding to written discovery, document production, and depositions, including expert depositions. The Northern District of California has held that deposition testimony and discovery responses from a prior state court action, unless inadmissible for another reason, are admissible in a Federal court

1 action. See e.g. *Erdmann v. Tranquility Inc.*, 155 F. Supp. 2d 1152, 1155 (N.D. 2001).

2 The parties have met and conferred and determined that, at this time, the only further
3 discovery needed at this time is limited expert witness discovery. All parties reserve
4 their right to conduct additional discovery upon the discovery of new facts or issues

5 **Defendants' Position:** Defendants presently intend to conduct the
6 following discovery: Written discovery to Res-Care re: facts, contentions, circumstances,
7 and documents regarding the settlement of the Underlying Action; Deposition of Res-
8 Care personnel re: facts, contentions and circumstances regarding the settlement of the
9 Underlying Action; depositions and/or subpoenas duces tecum of third parties
10 concerning the facts, contentions, circumstances and documents regarding the
11 settlement of the Underlying Action.

12 **9. Class Actions:**

13 Not applicable.

14 **10. Related Cases:**

15 *Conservatorship of the Person and Estate of Theresa Rodriguez v. Res-*
16 *Care, Inc., et al.*, San Mateo County Superior Court, Case No. 114740. This matter has
17 settled with the only remaining issue before the state court being Leonard Valve's
18 petition for attorneys' fees and costs and Res-Care's Motion to Strike same.

19 **11. Relief Sought:**

20 Plaintiff seeks the following relief:

21 (a) All costs, damages, attorneys' fees, interest or any other remedies
22 or expenses incurred in the Underlying Action and Rodriguez Settlement.

23 (b) For a declaration that Defendants are liable to Res-Care for
24 indemnity and contribution for all costs, damages, attorneys' fees, interest or any other
25 remedies or expenses incurred in the Underlying Action and Rodriguez Settlement.

26 **12. Settlement and ADR:**

27 **Plaintiff's Position:** The parties attended a mediation with retired Judge
28 Edward Infante on February 22, 2009. That mediation was not successful. With the

1 assistance of Judge Infante, Plaintiff is still negotiating a settlement with Bradford White,
 2 and hopes to reach an agreement in the near future. Plaintiff is not hopeful that, unless
 3 ordered by this Court, Defendants Leonard Valve and Roto-Rooter will participate in a
 4 further mediation or settlement conference.

5 **Defendants' Response:** Defendants Roto Rooter and Leonard Valve
 6 both contend that the demands to settle made by Res-Care are not supported by the
 7 facts or the law and that at this time, further settlement efforts would not be productive.

8 **13. Consent to Magistrate Judge for All Purposes:**

9 The parties consent to have a Magistrate Judge conduct all further
 10 proceedings.

11 **14. Narrowing of Issues:**

12 The have met and conferred regarding the narrowing of issues and have
 13 narrowed the issues to those set forth in Section 3 above.

14 **15. Scheduling:**

15 The parties propose the following trial schedule:

| | | |
|----|---------------------------------------|--------------------|
| 16 | Discovery Cutoff: | July 1, 2010 |
| 17 | Expert Designation Deadline: | August 1, 2010 |
| 18 | Deadline to Hear Dispositive Motions: | September 17, 2010 |
| 19 | Expert Discovery Cutoff: | September 30, 2010 |
| 20 | Pre-Trial Conference: | October 18, 2010 |
| 21 | Trial Date: | November 8, 2010 |

22 **16. Trial:**

23 Plaintiff anticipates that this case will be resolved by way of a 8-10 day
 24 bench trial. Defendants will not stipulate to a bench trial and anticipate that this case will
 25 be resolved by way of a 12-14 day jury trial.

26 **17. Disclosure of Non-party Interested Entities or Persons:**

27 The Parties have filed Disclosure Statements pursuant to FRCP Rule 7.1
 28 and a Certification of Interested Entities or Persons with their first appearance.

18. **Such Other Matters As May Facilitate The Just, Speedy And Inexpensive Disposition Of This Matter:**

Plaintiff contends that ordering Defendants to appear and participate in good faith at a mandatory settlement conference would facilitate the just, speedy and inexpensive disposition of this matter.

Defendants contend that, at this time, further formal settlement efforts would not be productive given the state of the facts and the law and the need for further investigation and discovery.

DATED: March 17, 2010

HANSON BRIDGETT LLP

By: 

JAMES A. NAPOLI
AMELIA MIAZAD
Attorneys for Plaintiff
RES-CARE, INC.

DATED: March ___, 2010

SIMONCINI & ASSOCIATES

By: _____

KENNETH SIMONCINI
KERRI A. JOHNSON
Attorneys for Defendants
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AND ROTO-ROOTER CORPORATION

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JANSEN & SIEGERT, LLC

By: _____

WILLIAM CREMER
THOMAS PENDER
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LEONARD VALVE COMPANY

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